

## Publication

---

06/24/2021

### Client Alert: Illinois Legislature Passes Non-Compete Reform—New Requirements for New Restrictive Covenants

Illinois employers should be aware of legislation that unanimously passed the Illinois General Assembly over Memorial Day weekend and is expected to be signed into law by Governor Pritzker on or before August 30, 2021. This legislation will affect non-competition and non-solicitation agreements entered into on or after January 1, 2022. The legislation will not impact the validity of covenants entered into prior to 2022.

Below are some of the key takeaways and requirements from the bill that employers should keep in mind as they enter into restrictive covenant agreements with their employees:

- The bill bans non-competition agreements for employees who earn \$75,000 per year or less. This amount is set to increase by \$5,000 every five years, until the earning minimum reaches \$90,000 in January 2037.
- The bill also bans customer and employee non-solicitation agreements for employees who earn \$45,000 per year or less. This amount will increase by \$2,500 every five years, until the earning minimum meets \$52,500 in January 2037.

---

#### CLIENT SERVICES

Labor & Employment

---

#### RELATED PEOPLE

Chad W. Moeller

William J. Tarnow II

Alissa J. Griffin

- When measuring these compensation thresholds, the bill is clear that “earned salary, earned bonuses, [and] earned commissions” are included in the calculations.
- The bill further provides that a covenant not to compete is void for any employee who is terminated, furloughed, or laid off as a result of business circumstances or governmental orders related to the COVID-19 pandemic, or under circumstances similar to the COVID-19 pandemic, unless enforcement of the covenant includes compensation equivalent to the employee’s base salary for the period of enforcement minus compensation earned through subsequent employment during that period.
- The bill also requires that employers ensure that employees are completely informed about their obligations prior to entering into these covenants. As such, it makes a covenant not to compete or covenant not to solicit void unless the employee is (i) advised in writing to consult an attorney before entering into the agreement; and (ii) the employer provides the employee at least 14 calendar days to review the covenant.
- Additionally, the bill allows an employee to recover attorneys’ fees, and possibly other “appropriate relief,” if the employee prevails on a claim filed by an employer seeking to enforce a restrictive covenant.
- The bill also makes a covenant not to compete void and illegal for individuals covered by a collective bargaining agreement under the Illinois Public Labor Relations Act or the Illinois Educational Labor Relations Act and certain individuals employed in construction.

In addition to the new requirements above, the bill also clarifies some ambiguities that currently exist in Illinois

law regarding non-competition and non-solicitation agreements:

- The bill clarifies that the determination of whether an employer has a legitimate business interest to justify the use of a covenant not to compete or covenant not to solicit is judged by the “totality of the facts and circumstances” and that each situation will be “determined on its own particular facts.”
- The bill also clarifies that in order for a restrictive covenant to be enforceable, there must be “adequate consideration,” which requires that (i) the employee must have worked for the employer for at least two years, or (ii) the employer otherwise provides “adequate” consideration to make a non-competition or non-solicitation agreement enforceable.

The bill gives exceptions, clarifying that the following are not considered covenants not to compete:

- Confidentiality clauses;
- A covenant prohibiting the use or disclosure of company trade secrets or inventions;
- An agreement entered into by a person acquiring or selling an ownership interest in a business;
- A clause requiring advance notice of termination, during which notice period the employee remains employed and receives compensation; and
- An agreement that the employee not reapply for employment by the same employer after termination.

While current restrictive covenants will not be impacted by this legislation, employers should start reviewing their non-compete and non-solicit agreements now, as any standard form used may need to be adjusted to meet the new Illinois requirements. In doing so, employers



may need to consider other issues under the statute, such as extra-territorial reach and choice of law provisions, which may already be in place. Employers should also be mindful of the due process requirements laid out in the bill and begin to consider which type of employees the employer wants to be subjected to restrictive covenants, given the new minimum salary and other requirements.

If you have any questions regarding employer rights and obligations when it comes to post-employment non-competition or non-solicitation agreements, please contact Bill Tarnow, Chad Moeller, Alissa Griffin or your Neal Gerber Eisenberg attorney.

---

*The content above is based on information current at the time of its publication and may not reflect the most recent developments or guidance. Neal Gerber Eisenberg LLP provides this content for general informational purposes only. It does not constitute legal advice, and does not create an attorney-client relationship. You should seek advice from professional advisers with respect to your particular circumstances.*